

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI**

**v.**

**STANTON GAINES**

**RESPONDENT,**

**APPELLANT.**

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DOCKET NUMBER WD71319  
**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

DATE: June 14, 2011

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Appeal From:

Jackson County Circuit Court  
The Honorable Robert Michael Schieber, Judge

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Appellate Judges:

Division Four: Lisa White Hardwick, P.J., James M. Smart, Jr., J., and Daren L. Adkins, Sp.J.

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Attorneys:

Shaun J. Mackelprang and Jamie Pamela Rasmussen, Jefferson City, MO, **for respondent.**

Susan Lynn Hogan, Kansas City, MO, **for appellant.**

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
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**v.**

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No. WD71319

Jackson County

Division Four: Lisa White Hardwick, P.J., James M. Smart, Jr., J., and Daren L. Adkins, Sp.J.

Stanton Gaines was convicted after a jury trial of one count of first-degree statutory rape, two counts of first-degree statutory sodomy, and one count of first-degree child molestation. Gaines appeals. He claims that the trial court erred in entering judgment against him because of improper evidentiary rulings the court made during his jury trial.

**AFFIRMED.**

**Division Four holds:**

(1) The trial court did not err in precluding defense counsel from asking the victim's mother whether the victim's sister blamed Gaines for Mother's renewed use of crack cocaine (which Gaines claims would have supported the defense theory that Mother was prejudiced against Gaines for reasons other than any alleged sexual abuse of the victim), because it would have been hearsay, it was tangential, the court permitted defense counsel to ask other questions that conveyed the same idea, and there was ample other evidence to inculcate Gaines. Gaines fails to address the other overwhelming evidence proving his guilt beyond a reasonable doubt and, thus, fails to carry his burden of demonstrating prejudice from the court's preclusion of this testimony.

(2) The trial court did not plainly err in permitting the State to introduce the victim's out-of-court statements (made when she was under fourteen) when the victim was seventeen years old at the time of trial. No authority has held that the age of the victim *during the defendant's trial* is relevant in determining whether the out-of-court statements made while the victim was under age fourteen should be admissible under sections 491.075 and 492.304. Both statutes are clear and unambiguous that the relevant question is the victim's age when the statement in question was made. Gaines fails to show that the legislature was concerned with the victim's age on the *date of the defendant's trial*. Focusing on the victim's age at the time of trial would frustrate the clear legislative purpose of the relevant statutes and would not make sense from a practical standpoint. In any event, Gaines does not demonstrate a manifest injustice or miscarriage of justice, nor does he demonstrate prejudice, because the State's other evidence against him was overwhelming.

Opinion by James M. Smart, Jr., Judge

June 14, 2011

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